SECTION IV.—THE CONSTITUTION OF FORESTS IN INDIA.

§ 1.—*The usual condition of waste land.*

The student will remember that we examined the question of the waste lands, and found that, in the absence of recognised private rights of ownership, however originating, the Government is, by ancient law, the general owner of all unoccupied or waste land[10]. Some portion of this has been given by public authority up to and included in the limits of towns, cantonments, and stations; some has been devoted to public roads and camping grounds; some has been leased or sold for cultivation: but after making allowance for all these dispositions of the "waste," there still remain (especially in the various hill ranges) vast tracts of "jungle" available to be made into forests.

But, unfortunately, the progress of events has not always left the *status* of this unoccupied waste perfectly clear. In some cases it is doubtful whether it is or is not attached (in some sense or other) to a neighbouring property, and so becomes subject to the same right. In other cases, rights of user may have been allowed to grow up, or may have been recognised by settlement and other orders; that is to say, persons may have been suffered to graze cattle, cut wood, and take other produce from them for so long that they are now regarded as having a *right* to these enjoyments, though Government remains the owner of the land itself. Or matters may have gone still further. Government may have given up (expressly or by inference) the *land itself* to certain persons or villages, and retained only certain rights—certain relics or fragments of its original plenary right of property.

Consequently, the *extent* of the Government right is not the same in all waste lands: it may vary from a simple unrestricted property, to a property so burdened with rights of other people that Government has only a very slender interest left.

[10] See Part I, Chapter III, Sec., III, page 55, *ante*.

§ 2.—*This condition accounted for.*

It is not difficult to account for such a state of things in India. At first the population was very scanty, and in most places the land covered with natural jungle was far in excess of the requirements of the population. Speaking generally (for of course there were districts exceptionally situated), the occupied and cultivated "villages" formed oases in the great expanse of waste land. The object of the ruling power was then not to protect the waste as useful forest, but to get cultivation to extend as fast as possible and to increase its land-revenue. Consequently, it never cared to assert any special right over the waste as forest or as anything else: it ignored it altogether, and suffered the neighbouring villagers to wander over it at pleasure, to graze their flocks, cut trees (and perhaps sell them if they were near enough to a practicable line of export), and burn the forest to produce fresh grass, or for temporary cultivation. This state of things continued down to our own time, in all those provinces where the waste was, relatively to the cultivation, extensive.

§ 3.—*Right of the State not lost.*

But it would be the greatest mistake to suppose that, because the ruling power did not care to assert its general proprietary right in the waste, that therefore it had lost it or abandoned it. There never was a time when the sovereign could not at any moment make a *grant* of the waste, to be brought under cultivation; showing that its right, though not asserted at all times, could at any moment be revived[1]. There never was a time when the Government could not issue an edict "reserving" certain valuable trees—teak, sandal, blackwood, and others—as royal trees; nor any time when the chieftain of the province would have hesitated to enclose off a large area of the waste as a hunting preserve.

[1] "The right arising from the State's eminent domain is not extinguished by its mere non-exercise, and its exercise was not called for till some public injury or inconvenience arose" (*per* WEST, J., in the Kanara case, p. 739).

There may have been cases where the whole waste was, as in the permanently settled districts of Bengal and Madras, deliberately given up to the zamíndárs; there may be others where, at a land revenue settlement, it was thought right to give up the waste to the villages within whose nominal boundaries it lay, as in the North-West Provinces. But in all such cases the abandonment by the Government of its right in the waste is capable of distinct proof; and vague statements that "Government has not asserted a claim to the waste for generations," and such like (which are sometimes put forth as objections to the introduction of forest law), are wholly inadmissible.

§ 4.—*Rights of user adverse to the State.*

But while in most cases (except where, as above indicated, there is distinct proof to the contrary) the ultimate right to the waste remains to Government, it is equally true that the long-continued user of its surface products by the neighbouring villages or by individuals, cannot in fairness be ignored or rudely thrust aside.

Whether or no these long-continued usages have given rise technically and in the strict legal sense to a *right*[2], still, in practice, they must be provided for; and it is impossible to constitute a forest estate without considering the public welfare, and judging whether, considering the claims of the neighbours, the forest can be made into a Government forest estate, or had better be given up to the village, or should be regarded as the joint property of the State and the village.

§ 5.—*Practical result of the different rights.*

The result of such an equitable recognition of rights of user, taken together with the original right of the State in the waste, will practically (as we know by experience) be found to leave all the waste lands (which have not been expressly alienated) in one or other of the following predicaments:—

(1) The lands are the absolute property of Government.

[2] See some further remarks on this subject in Chapter V, Section 1, on the subject of Forest Rights.

(2) The lands are the property of Government, but are burdened with rights of user.

(3) The Government has parted with the proprietary right, but still retains the right of management, or the right to the trees, or the right to close for improvement, or the right to levy fees for use of the products, or some right of the kind other than proprietary right.

The Indian Forest Act therefore in section 3 takes up the whole mass of lands which are waste and unoccupied, and which are, in some general sense, at the disposal of Government—and the terms of section 3 will be found exactly to cover the three cases put—and subjects them, *not* to any arbitrary *régime*, as they stand[3], but to an initial process of settlement, enquiry, and adjustment, the object of which is to establish them ultimately in one or other of the classes into which they should naturally and logically fall when once the different rights are ascertained and separated.

§ 6.—*State or "reserved" forests the most important to the public at large.*

The class of forest estate, the constitution of which is naturally the first object, is that which can be kept permanently and managed by *the State* under complete rules, for the benefit of the public.

The separation therefore of the rights of the State from those of private persons is therefore primarily aimed at by the Forest Act (Chapter II). We know from experience that, by proceeding in

[3] Here I must point out the absurdity of the objection which I have seen raised to section 3, that it amounts to "confiscation," that it puts it into the hands of Government to seize upon estates in which it has only such a slender right as to be entitled to "part of the produce," and so forth. The section does nothing of the kind; it does not alter existing rights by one hair's breadth. It simply gives power to Government to initiate a fair and reasonable process of enquiry and settlement whereby all rights will be fully recognised and provided for. If we were to try and start with something less than the whole mass of unoccupied lands, it would inevitably be found, in practice, that a more restricted definition would prevent our dealing with lands which might properly be dealt with, and yet would include lands that ought to be let alone.

this way we, first of all, place in a safe position all such forests as can be managed more or less completely for the benefit of the State at large.

In some cases such forests will be found to be entirely free from all adverse rights: but in a large number of cases there will be certain rights of user, or claims to plots of land within the forest, which will require settlement, but which being arranged for, will leave the forest as a whole, fairly profitable to the Government.

Such estates will form the backbone of the forest administration, and will be the permanent public forest estates, on which the country mainly depends for those benefits, direct and indirect, which forests afford.

These estates are called in the Act "reserved forests[4]," and the process prescribed for their constitution and for their management when constituted, is the standard or regular forest *régime* which must be applied as far as practicable to all forests which it is intended permanently to preserve, and which the State has a right to control for the public benefit.

§ 7.—*Lands which can be only managed as forest to a limited extent.*

If we succeed in establishing this great class of Government reserved forests, whether burdened with, or free from, rights of user, the rest of the lands will without difficulty be dealt with, and the interests of the persons entitled be secured. For it is obvious, if the conditions necessary to constitute a "reserved forest" are examined, that it will not be *all* the lands included in the necessarily wide terms of section 3, that can actually be made into a "reserved forest" *for the benefit of the State.* Nevertheless such lands may still be of importance, and their conservation be desirable.

[4] The phrase is not a happy one, but it is consecrated by long familiar use in India. It means that, whereas most tracts of forest or "jungle" are gradually brought under the plough, or leased under the "waste land rules," *these* forests are "reserved" from alienation and from being cleared or devoted to purposes other than the production of forest produce.

In some cases it will be best to make over these lands as village forests for the benefit of the villages whose rights in them are already very extensive.

The settlement of rights would then only be of rights of other individuals or communities (adverse to the villages to whom the forest belongs), or claims of individuals which are inconsistent with the general enjoyment of the forest[5].

In other cases the Government will have no right to anything, but to the trees, or to some fees or dues, and yet the conservation of the forest may be of great importance. Here section 79 also helps; since not only does the section apply to jointly owned forests (properly so called), but also to forests in which the produce may be shared between Government and others. In such cases it would be easy to act under section 79, clause (*a*), and undertake the management, accounting to the villagers for their interest (and allowing them a proper use of the forest, which is what they would be more anxious about).

As I said, however, the great bulk of waste lands mentioned in section 3, and brought under the operation of the law, with a view to their settlement, will be found to be lands in which there is no doubt about the proprietary right in Government: only the rights of user may be more or less extensive. So that the Act looks primarily to the constitution of reserved forests for the benefit of the State. In future, the constitution of village forests under a similar procedure will probably become of almost equal importance, and

[5] This, I think, would, in practice, be what a Settlement Officer would do, when he was applying the procedure of Chapter II to the settlement of a tract which was not intended to be a forest for the benefit of Government, but for the benefit of a village (under State control). The Act, considering that practically State reserved forests will be the largest and most usual class, has drawn up the provisions for the settlement of claims to land (section 10), and to rights (sections 11-14) on the basis of their being *claims adverse to Government*. The difficulty might be avoided, when the Act is revised, by wording Chapter II so as to suit all classes of forests that were put under a normal or regular management, and constituted as permanent forest estates: the claims then would all be settled from the point of view of the particular class to which the forest was intended to belong, not only, as at present, in the interest of Government.